

EVIDENCE — Rule 404(b) — Proof of Identity — Revised 3/2010

In *State v. Van Adams*, 194 Ariz. 408, 984 P.2d 16 (1999), the defendant was charged with murdering a young female real estate agent by strangling her as she showed him the master bedroom of a two-story model home. The victim's neck bore three bruises on the left side of her neck and one on the right. Although the victim was not sexually assaulted, she had been disrobed and the police found three buttons from her shirt in the closet of that bedroom. The police also found semen stains in that closet; the defendant could not be excluded as the source. The defendant claimed mistaken identity and denied any wrongdoing.

The State presented evidence of previous contacts between the defendant and three other young female real estate agents. S.W. testified that some two months before the murder, she had met with the defendant in the same subdivision where the victim was killed and shown him the same model home. He gave his name as "Jim Adams." S.W. said that the defendant stood closer than normal to her and when other prospective buyers came to the model, the defendant left immediately. The defendant then made other visits and telephone calls to S.W., each time asking her on dates. Another agent, K.R., testified that on the day of the murder, she had met with the defendant and accompanied him to the same model home. She felt apprehensive and uneasy because the defendant walked unusually close to her. He signed a guest registration card as "James Adams," but included his correct address and telephone number. The State also presented evidence of a third real estate agent, M.C., that six years earlier she had met with the defendant in a new home subdivision. The defendant asked her to show him the upstairs master bedroom in a two-story model home, and

she accompanied him to that room and its closet. As they walked down the stairs, the defendant, using his right hand, grabbed M.C. by the neck, threw her to the floor, and attempted to sexually assault her, ripping her clothes from her body as he did so. She managed to escape and called the police, and the defendant was convicted of assault with intent to commit rape.

The trial court admitted this evidence to prove identity, modus operandi, intent, knowledge, opportunity and preparation, noting that the victim's murder was "remarkably similar" to the sexual attack on M.C. and was "both unusual and distinctive to appear as if like a signature." *Id.* at 415, ¶19, 984 P.2d at 23.

The defendant was convicted of first-degree murder and appealed, arguing that the trial court abused its discretion by allowing the State to present the evidence of the other agents. The Arizona Supreme Court stated:

We review admission of Rule 404(b) evidence under an abuse of discretion standard. *See State v. Gulbrandson*, 184 Ariz. 46, 60, 906 P.2d 579, 593 (1995). Evidence of prior acts is admissible if it is relevant and "admitted for a proper purpose." *Id.* (referencing *Huddleston v. United States*, 485 U.S. 681, 691, 108 S.Ct. 1496, 1502, 99 L.Ed.2d 771, 783 (1988)). Evidence is relevant if it tends to make a material fact more or less probable than it would be absent the evidence. *See Ariz. R. Evid.* 401 (1997). When "similarity of the crimes is [a] basis for the relevance of the evidence," the other crime "must be similar to the offense charged" and the similarities must exist when normally differences would be expected to be found. *Gulbrandson*, 184 Ariz. at 61, 906 P.2d at 594; *State v. Williams*, 182 Ariz. 548, 552, 898 P.2d 497, 501 (App.1995). Although evidence of prior acts may not be used to prove the defendant's propensity to commit the crime, it is admissible when used to prove the defendant's "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Ariz. R. Evid.* 404(b) (West Supp.1998); *State v. Roscoe*, 184 Ariz. 484, 491, 910 P.2d 635, 642 (1996); *Gulbrandson*, 184 Ariz. at 61, 906 P.2d at 594; *Williams*, 182 Ariz. at 552, 898 P.2d at 501; *State v. Terrazas*, 189 Ariz. 580, 582, 944 P.2d 1194, 1196 (1997).

Id. at 415, ¶20, 984 P.2d at 23. Based on that standard, the Court held that the evidence was relevant and admissible to prove identity, intent, and opportunity. The Court further found that the evidence was not unfairly prejudicial because of the striking similarities between the four incidents. *Id.* at 415-16, ¶¶ 20-24, 984 P.2d at 23-24.